

REMARKS

The Examiner has rejected Claims 1 through 15. Claim 2 is canceled by way of the above amendment. Claim 1 has been amended to limit the claimed subject matter to an infant heel warming device, and incorporated the limitation present in canceled claim 2. Claims 1 and 3 through 15 are pending. No new matter has been added by way of the amendments herein above.

Objection to Specification:

The Examiner objected to the disclosure for two reasons. The Examiner objects to the sentence on page 9, lines 9-11 as being a nonsensical description of the second side transparency. The second objection is based on a grammatical error on page 10, line 11.

Applicant has amended and clarified the meaning of the sentence on page 9. In particular, the Examiner has deleted the first occurrence of “second” and inserted the phrase “the presence of” before the second occurrence of “second” in the sentence. Thus, Applicant’s original meaning of the sentence is better expressed and clarified, i.e., that the benefit of the transparent viewing feature is still present as long as one side of the device is transparent.

The grammatical error on page 10 has been corrected by the amendment. The Examiner’s concerns have, therefore, been fully addressed.

Objection to Claims:

Claim 10 has been objected to by the Examiner on the basis that certain percentage values are inconsistently referred. Applicant has amended claim 10 to correct

the typographical error. The Examiner's concern has, therefore, been fully addressed.

Rejection under 35 U.S.C. §102:

Claims 1, 3, 5 through 8 and 11 through 15 have been rejected by the Examiner under 35 U.S.C. §102(b) as being anticipated by Silver U.S. Patent No. 5,897,580.

Applicant respectfully traverses this rejection for the following reasons.

The Examiner argues that Silver teaches a warming device having the features claimed by Applicant. In order for a claim to be anticipated under 35 U.S.C. §102, a single prior art reference must disclose each and every element of the claimed invention. Structural Rubber Prods. Co. v. Park Rubber Co., 749 F.2d 707, 715, 223 U.S.P.Q. 1264, 1270 (Fed. Cir. 1984). If the reference fails to suggest even one limitation of the claimed invention, the claim is not anticipated. Atlas Powder Co. v. E.I. du Pont De Nemours & Co., 750 F.2d 1569, 1574, 224 U.S.P.Q. 409,411 (Fed. Cir. 1984).

Applicant has amended independent claim1 to limit the claimed invention to the infant heel warming device described in detail in the specification. Silver pertains to a breast warming device. The limitation of claim 2 (now canceled), which was not subject to the Examiner's rejection, has now been incorporated into independent claim 1. Thus, the Silver patent fails to constitute a single prior art reference that anticipates Applicant's claimed invention.

The claims are not anticipated by Silver U.S. Patent No. 5,897,580 within the proper meaning of 35 U.S.C. §102. This rejection should, therefore, be withdrawn.

Rejections under 35 U.S.C. §103:

Claims 1, 2 and 4 have been rejected by the Examiner under 35 U.S.C. §103(a) as being unpatentable in view of Cheney, III U.S. Patent No. 5,143,048 in view of Silver U.S. Patent No. 5,897,580 in further view of Manker U.S. Patent No. 4,872,442.

Applicant respectfully traverses this rejection for the following reasons.

The Examiner argues that the Cheney III reference teaches an infant foot warmer containing an activatable exothermic composition, but is absent a flexible polymeric containment, a skin-contacting and transparent viewing side, a fabric layer on the skin-contacting surface, or securing structure. The Examiner relies on Silver and Manker for features absent from Cheney III, concluding that one of ordinary skill would have found the claimed invention obvious in view of their teachings.

Again, Applicant has amended independent claim 1 to an infant heel warming device. As to Cheney III, Applicant's invention constitutes a patentable improvement of infant heel warmers such as those of Cheney III.

But one of ordinary skill in the art would not have viewed Silver and combined its teachings with Cheney III. Whereas Cheney III relates to an infant heel warmer, Silver relates to a breast warming device for use in conjunction with a breast pump. In addition to the features acknowledged as being absent from Cheney's teachings, the device in Silver is structured to function in conjunction with a breast pump. Just as one of ordinary skill would not equate a human breast with a human infant's foot as its anatomical equivalent, one of ordinary skill in the art would not possess reasonable motivation to combine Silver with Cheney III. Both references teaching "warming devices" is about the extent of their commonality, and Applicant's invention is far more complex than a broadly thermal concept.

The Examiner relies upon Manker U.S. Patent No. 4,872,442 for a “adhesive warming bag...with at least one strap.” Applicant’s do not find such teachings within the Manker reference applied by the Examiner. Manker does not provide teachings that could combine with Cheney III and Silver to support a proper rejection on obviousness grounds. The Examiner has failed to present a collection of references which, alone or in combination, contain teaching linked by reasonable motivation that can adequately present a case of prima facie obviousness against Applicant’s claimed invention.

Given the above, the claimed invention is not unpatentable over these references within the proper meaning of 35 U.S.C. §103. This rejection should, therefore, be withdrawn.

Claims 9 and 10 have been rejected under 35 U.S.C. §103(a) as being unpatentable over Silver U.S. Patent No. 5,897,580 in view of Angelillo et al. U.S. Patent No. 5,736,110. Applicant respectfully traverses this rejection for the following reasons.

The Examiner argues that Silver discloses the claimed invention except for reciting the thermochemical composition of liquid mixture of sodium trihydrate and water. The Examiner further relies on Angelillo et al. for a teaching of a thermal device containing a trigger and super saturated sodium acetate trihydrate solution. The Examiner concludes that it would have been obvious to one of ordinary skill in the art to use supersaturated sodium acetate solution to provide reusable heating. The Examiner goes on to argue ingredient ratios.

The shortcomings of the Silver reference are discussed in detail in the above remarks to the Examiner’s rejection under 35 U.S.C. §103(a) and are likewise applicable

here and repeated herein. As to Anglelillo, the Anglelillo reference does not bring Silver closer to the claimed invention in a manner sufficient to present a tenable case of obviousness. Applicant is not seeking the patentability of a thermal solution per se. The Examiner's references, alone or in combination, fail to teach the main features of Applicant's claimed invention. Nor does the Examiner's alleged motivation as to the solution address the absence of features in the Silver and Anglelillo references that would be needed to support a proper rejection on obviousness grounds.

Given the above, the claimed invention is not unpatentable over these references within the proper meaning of 35 U.S.C. §103. This rejection should, therefore, be withdrawn.

Conclusion:

In light of the above amendments and the accompanying remarks, it is believed that the application is now in condition for allowance, and prompt notification to that effect is earnestly solicited. The Examiner is invited to contact the undersigned to discuss the application on the merits if it is believed that such discussion would expedite the prosecution.

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Respectfully submitted,



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